FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

Rickert Rice Mills, Inc., Petitioner, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.	No. 577
A. B. Dore, Petitioner, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.	No. 578
United Rice Milling Products Co., Inc., Petitioner, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.	No. 579
Baton Rouge Rice Mill, Inc., Petitioner, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.	No. 580
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SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR INJUNCTION TO PRESERVE STATUS QUO.

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May it Please the Court:

Petitioners have been granted leave by the Court to file a short supplemental statement in support of their motions for injunction to preserve the *status quo* in the above cases.

While the facts and authorities are set out in the petition for writ of certiorari and brief in support thereof in each of the cases, there are certain matters bearing upon whether the injunctions prayed for should issue which do not appear in the petitions or briefs.

These cases were originally filed in United States District Court for the Eastern District of Louisiana, of which District Judge Borah is the regular judge. When these cases were filed and submitted, Judge Borah was ill and Judge John McDuffie of Mobile, Alabama, was assigned to sit in Judge Borah's place. Although affidavits were introduced by petitioners and respondent, they were not considered by the Court since counsel for the Government at the hearing interrupted the argument of petitioners and stated to the Court that, for the purpose of the hearing, the Government conceded that petitioners could not make the proof required by Section 21 (d) of the Agricultural Adjustment Act for the refund of any taxes illegally assessed. Counsel for the Government argued the sole proposition that the Court was without jurisdiction because of Section 21 (a) of the Act, as amended, and stated to Judge McDuffie that Judge Borah had previously dismissed similar suits for that reason. Whereupon, Judge McDuffie announced that he felt bound by the decision of the regular judge and would, therefore, enter the same order as had been entered by Judge Borah in similar cases. He likewise stated that for the same reason he would overrule petitioners' motion for injunction pending an appeal.

The motion for injunction pending an appeal filed in the Circuit Court of Appeals was presented to Circuit Judges Foster and Sibley and District Judge Strum in chambers late in the afternoon after the Court had heard its regular docket for the day. Counsel for petitioners was permitted to appear before the Court in chambers where the sole matter discussed was the question of *fact* whether petitioners could or could not make the proof required by Section 21 (d). This, despite the fact that the case was before the Circuit

Court on appeal from a *final judgment* of the District Court dismissing the bill pursuant to a motion by respondent which *admitted* that the proof required by Section 21 (d) could not be made.

Neither in the trial court nor in the Circuit Court of Appeals has there been any hearing or argument upon any of the constitutional questions raised by petitioner with reference to Section 21 (a) and Sections 115 to 131 of Title 26, U. S. C. For this reason, unless this Court grants the injunction prayed for to preserve the *status quo* and grants certiorari in these cases, the petitioners herein will be in the position of having urged important constitutional questions relating to their property rights which they have never had an opportunity to present to any court. The effect of a denial of the injunctive relief prayed for herein, and the writ of certiorari prayed for, will be to effectively deprive petitioners of any opportunity to have a hearing in any court upon these grave constitutional matters raised in their petition for certiorari because they will of necessity have to pay the taxes involved in the suits as they accrue each month prior to the time when their appeals will come on in regular order to be heard by the Circuit Court of Appeals.

Petitioners' taxes for the month of September are now past due and counsel for petitioners have been advised today that the respondent proposes to give notice and demand for the payment of such taxes not later than November 20th and such notice and demand will within 10 days thereafter authorize respondent to use all of the summary methods of collection provided in Sections 115-131 of Title 26, U. S. C.

When these circumstances are considered in connection with the other facts set up in the petition and brief for certiorari, petitioners submit that this is a case where the relief prayed for should be granted.

Petitioners will not burden the Court with citation of prior cases in which injunctions have been granted by this

Court to preserve the *status quo* in cases pending herein since the Court has just had them fully presented to it in another case involving the Guffey Coal Act.

Petitioners further show the Court that this case is entirely different from the Washburn-Crosby Case in which the Court denied certiorari on Monday last. In that case, petitioners had been granted an injunction pending appeal by the Circuit Court of Appeals for the Eighth Circuit and petitioners' right in that case could be fully protected by pursuing the usual course. Furthermore, there was not in that case, as in these cases, an order of the Circuit Court of Appeals, which, though interlocutory in form, as a matter of fact finally disposed of these cases against petitioners. Likewise these cases are entirely different from the Carter Coal Company Case which has just been disposed of by the Court. In that case, petitioners prayed for an injunction without the giving of any bond or other security and it affirmatively appeared that the trial court would have granted the injunction prayed for had security been given. Petitioners here offer to place the full amount of tax involved on deposit in any depository which may be designated by this Court, each month as the taxes accrue, or to give any other security which this Court may deem just and reasonable.

Wherefore, petitioners submit that the motions for injunctions to preserve the *status quo* should be granted by this Honorable Court.

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November 12, 1935.